

# **TOWN OF LAUDERDALE-BY-THE-SEA**

## **BOARD OF ADJUSTMENT MINUTES**

*Town Commission Meeting Room*

*Tuesday, June 18, 2008 at 11:00 A.M.*

### **I. CALL TO ORDER**

Chairman Thomas Carr called the meeting to order at 11:00 a.m. Members present were Chairman Thomas Carr, Vice Chair Joseph Couriel, James Pollock and George Crossman. Also present were Town Attorney Daniel Abbott, Development Services Director Frank Rabinowitz, Zoning Official Tatiana Solovieva, and Board Secretary Colleen Tyrrell.

### **II. PLEDGE OF ALLEGIANCE TO THE FLAG**

The Pledge of Allegiance was recited.

### **III. SWEARING IN OF NEW BOARD MEMBERS**

Board Secretary Colleen Tyrrell administered the Oath of Office to the new Board Members for their new term of office.

### **IV. APPROVAL OF MINUTES**

Regular Meeting – April 16, 2008

The Board had no revisions to the minutes of April 16, 2008. A motion was made by James Pollock seconded by George Crossman, to approve the minutes as presented. All voted in favor to approve the April 16, 2008 minutes.

### **V. NEW BUSINESS**

- A. Project: Replacement of swimming pool and spa.  
Applicant: Timothy D & Darla J Hashagen  
Location: 1900 SE 16<sup>th</sup> Street  
Request: Description of Variance request: **The property owners are seeking a Variance from the provision of the Section 30-313(29) (b) to allow a proposed swimming pool to be constructed 6 feet 7 inches from the SE 19<sup>th</sup> Street public right of way and an adjoined spa to be constructed 8 feet from the right of way rather than 10 feet as required by the Code and from provision of the Section 30-313 (4) (c) to allow the required swimming pool enclosure (fence) to be located within corner yard along the property line rather than within 10 feet from the public right of way as required by Code.**

Chairman Carr asked Mr. Hashagen to come forward to present his comments to the Board.

Mr. Tim Hashagen advised the Board that the request for the variance was due to an error. Mr. Hashagen said that he applied for a permit in good faith with the Town. The permit was granted and the pool was constructed. Mr. Hashagen said that an individual from a neighboring community had applied for a similar permit and was denied. Mr. Hashagen was later advised by Town staff that there had been a mistake by virtue of the setbacks in approving his swimming pool permit. Mr. Hashagen said that he was somewhat put out by this matter and said that he had done everything that he was asked to do. He had signed a contract for the work in January and it took three months to obtain the permit. Then he was asked to provide an updated survey even though there were no changes to the old survey, so there was an additional out of pocket

expense for that. Mr. Hashagen said that there was an existing pool and was asked to provide additional soil testing even though the new pool was going in the exact same spot. Again, he incurred a lot of additional expense for the soil testing. Mr. Hashagen said that if this gentlemen had not stopped by and registered a complaint, frankly, he felt the mistake would never had been caught and he was at the mercy of the Board today.

Chairman Carr asked for comments from Town Staff.

Zoning Official Tatiana Solovieva came forward and advised that she was the one that originally reviewed the permit and that she approved the pool replacement in error. At that time, Ms. Solovieva did not realize that the new pool would be located within the corner yard setbacks, thinking the location of the pool was in the side yard. Ms. Solovieva said that the Town has different provisions for side yard setback requirements than for corner yard setback requirements. Ms. Solovieva said that Mr. Hashagen had provided all of the necessary pervious and impervious calculations which met the requirements of the Town's code. Ms. Solovieva asked the Board to refer to the site plan provided in their backup material and noted that the pool was a kidney shape and that only two small sections of the pool and spa were encroaching the set-backs. The spa encroached two feet and the pool was encroaching approximately 3 ½ feet. Ms. Solovieva said that because the property had a swimming pool for many years, there was an existing fence as required for swimming pool enclosure. The fence is a legally non-conforming fence. In the event the fence ever needed to be replaced due to deterioration or catastrophe, Ms. Solovieva advised that she was including the fence in the variance to allow the required swimming pool enclosure to be located within the corner yard along the property line rather than 10 feet from the public right-of-way as required by the current Code. Ms. Solovieva said there was no safety issue because neither the pool nor the fence was located in the visual sight triangle. Ms. Solovieva respectfully asked the Board to approve the variance.

Chairman Carr asked the Board for comments.

Mr. Couriel asked Ms. Solovieva if the new pool was larger than the old pool.

Ms. Solovieva said that the new pool really was not larger but it was slightly in a different location due to the shape.

Mr. Couriel asked if the old pool encroached.

Ms. Solovieva said that the old pool did not encroach and that the new pool was slightly in a different location.

Mr. Couriel asked Ms. Solovieva to explain why the fence was legally non-conforming.

Ms. Solovieva said that when you have a swimming pool on the property, you have to have a screen enclosure or fence minimum five feet high with a self-locking gate. The existing fence does not meet the minimum 10 foot setback requirement and that is why she included it in the variance in the event the fence needed to be replaced that would have to meet new Code requirements.

Mr. Couriel asked how she would know if a new fence would be built according to Code accept for the setback.

Ms. Solovieva said that anyone that would like to put in a new fence would have to apply for a building permit and the structural review would determine if the fence was strong enough to meet current Florida Building Code requirements.

Mr. Couriel said that he did not have a problem with the fence issue but he did have a problem with the hedge that surrounds the property and abuts the edge of the street and he did not see how that could be legal.

Ms. Solovieva said that all of Bel Air and Terra Mar Island have this problem and advised the Board that the Town will have a workshop in the future to address the hedge problem.

Frank Rabinowitz, Director of Development Services, advised the Board that the annexed section of the Town had some inconsistencies with Code that was allowed before under the county and there were problems with the Unified Code that needed to be addressed that were causing problems with Code Enforcement and Zoning. Mr. Rabinowitz said that there was going to be a workshop and believed it would be scheduled for March of 2009. The Town was currently compiling items in the Code that do not currently correlate between the annexed area and the rest of the Town. Mr. Rabinowitz said that by moving this fence ten feet in from the property line as required by the current Unified Code read, would have made any type of pool constructed in the side yard impossible. The hedges also are a concern and the department has been advised not to cite or enforce the code until an understanding is reached because the violations are so pervasive in the annexed areas.

Mr. Couriel said that he was in the old part of Town and he was required to do everything by the Code and that if you become part of the Town you have to abide by everything.

Mr. Rabinowitz said there were some things overlooked when developing the Unified Code and they are trying to keep in step with the history of the Town and the changes to annexed area to make them conform to the Unified Code.

Mr. Couriel felt it was unsafe the way the hedges were right now, because they are right up against the street, and felt that the opportunity was there to start correcting these types of situations and wanted to start by making it a condition for approval of the variance that the hedge be removed from the Town property.

Mr. Rabinowitz asked if it could be put as a condition on what was going to be worked out at the workshop. Mr. Rabinowitz assured Mr. Couriel that hedges in the right-of-way would be an item addressed at the workshop and they would abide by the workshop decision and how to amend the Code.

Mr. Couriel agreed to abide by the workshop's determination.

Mr. Pollock interjected that if the Town does have the workshop and a new code is issued about the hedges, whatever was decided to be the Code for all instead of implementing selective enforcement now, would not be fair because the new Code could be more lenient than what the Board would stipulate as a condition which would then be unfair to the Applicant in the long run.

Mr. Rabinowitz said the Mr. Couriel did point out a concern that the Town also has with revisiting the issue of the hedges amongst other things in the workshop. The workshop will make a due-diligent attempt to make the Code better for all.

Mr. Couriel made a motion to approve the variance in its entirety as stated in Staff's recommendation with the condition that the Applicant would abide by the findings of workshop regarding hedges in the right-of-way without any reservations whatsoever.

The motion was seconded by Mr. Pollock.

Chairman Carr asked for further discussion.

Mr. Crossman asked if it was illegal to have a hedge in the right-of-way.

Mr. Rabinowitz said that it is illegal in the current Code. He said that this problem was recognized at the very start of the annexation and that almost everyone in that area has this condition. Mr. Rabinowitz said that an exact date had not yet been set but there was a reference to having the workshop sometime in March 2009.

Mr. Pollock commented that he had been on the Board for a while and he understood that it could get quite confusing because of the various differences between New Town and Old Town. Mr. Pollock said that when Staff is trying to do a tremendous amount of work looking at codes, stipulations, and loopholes in various areas, it has to be difficult and understood how a mistake like this could happen. Mr. Pollock said that he felt that the workshop would be very valuable because it is not only land code, or building services, but it is also about ordinances regarding parking and would be very extensive in its review.

Ms Solovieva said that it was much easier to do plan review with the new Unicode website. You can now go and click on a category such as fence, and the code pertaining to that category comes up. Previously, everything was on hard copy and had to be done manually.

Mr. Couriel said that the Town needs to be consistent and just because Staff made a mistake, it does not absolve the property owner from being responsible for knowing what is required. Mr. Couriel asked Town Attorney Abbott if that was correct.

Town Attorney Abbott said that it was generally the case that the Codes need to be complied with notwithstanding any administrative mistake but that was not the grounds for the variance request. The Board should pass upon the variance pursuant to the variance criteria contained in the Code.

Chairman Carr asked if there were any more questions or objections from the public.

Mr. Crossman added that he would like to recommend that the location of the fence be grandfathered in since a fence is required to enclose the pool and it would not be practical to move the fence to the agreed set-back because it would be in the middle of the pool. Mr. Crossman recommended that a condition be added that if the fence is damaged, it could be reconstructed along the property line where it now stands.

Mr. Pollock made a point of clarification and verified with Mr. Couriel that he was following the recommendation of Staff on approval of the variance with the hedge contingency once the new hedge guideline was implemented by the workshop. Mr. Pollock verified with Ms. Solovieva that she had included the fence in the variance and if the fence ever needed to be replaced, it could be reconstructed without applying for a variance.

Town Attorney Abbott interjected that the current fence was grandfathered in as a matter of law and the Applicant did not need the approval of the Board for the current fence to remain where it is. In the event of a casualty of this fence, a new fence would have to be otherwise in compliance with the new Code and that is why Staff has included a setback variance for the fence. That way a future fence could be reconstructed at the property line rather than a 10 foot setback. Attorney Abbott said that the Board was being asked to grant only the setback variance for the future fence.

Mr. Crossman commented that the permit was issued viewing the side property line as a side property line and not having a public right-of-way. In the way that the site plan was viewed and the permit was issued, the fence was located on the property line legally.

Mr. Rabinowitz referred to the site plan provided in the Board's backup material, and pointed out that the street was not indicated on the plans which was the main contributor to the error.

Mr. Couriel said that he has the same house on a corner lot and he replaced his fence on the property line on the side.

Ms. Solovieva stated that according to the current Code, you are allowed to have a fence on your property line, on the side, on the rear but you are not allowed to have a fence on the front yard. However, if you have a corner lot, the current Code states that you have to have 10 feet setback from the property line.

Mr. Couriel said that did not make sense because the fence would then be inside his house.

Mr. Rabinowitz responded that those conditions would be legally non-conforming and that at the time the house and the fence were installed, he did not believe that portion of the Code was written to address corner lot setbacks.

Ms. Solovieva said that was the reason why the Town was having a workshop to review and address the various conflicts.

Chairman Carr said that there was a motion made by Mr. Couriel and seconded by Mr. Pollock to approve the variance in its entirety as stated by Staff with the stipulation that the hedge would be in compliance with the future Code revisions as determined by the workshop.

Attorney Abbott clarified that the Board is considering multiple variances; the pool and the spa setback and the future fence setback with the condition that the hedge would be in compliance with the future Code revisions.

In a roll call vote, all voted in favor to allow a proposed swimming pool to be constructed 6 feet 7 inches from the SE 19<sup>th</sup> Street public right-of-way and an adjoined spa to be constructed 8 feet from the right-of-way rather than 10 feet as required by the Code and from provision of the Section 30-313(4) (c) to allow the required swimming pool fence enclosure to be located within the corner yard along the property line rather than within 10 feet from the public right-of-way as required by Code with the condition that the hedge surrounding the property be in compliance with future Code revisions. The motion carried 5 – 0.

Ms. Solovieva thanked the Board for their approval and reminded Mr. Hashagen to attend the Town Commission meeting scheduled for July 8<sup>th</sup>, 2008 at 7:00 PM to review his variance. Ms. Solovieva welcomed the new Board members and thanked all Board members for providing their services to the Town.

## **VI. UPDATES/BOARD MEMBER CONCERNS**

## **VII. ADJOURNMENT**

Having nothing further to discuss, Chairman Carr adjourned the meeting at 11:40 A.M. June 18, 2008.

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Thomas Carr, Chairman

ATTEST:

Date Accepted: \_\_\_\_\_

Colleen Tyrrell, Board Secretary

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